TRANSCRIPT

OF

RECORD

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. 90.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

NATIONAL EXCHANGE BANK OF PROVIDENCE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Filed May 20, 1907.

(20723)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 321.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

NATIONAL EXCHANGE BANK OF PROVIDENCE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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a UNITED STATES OF AMERICA, *ss:*
The President of the United States,

To the honorable the Judges of the United States Circuit Court of Appeals for the First Circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Circuit Court of Appeals, before you, or some of you, between National Exchange Bank of Providence, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of May, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

OLIVER WENDELL HOLMES,
Associate Justice of the Supreme Court of the United States.

b *Return on writ of error of United States Circuit Court of Appeals for the First Circuit.*

United States Circuit Court of Appeals for the First Circuit.

And now, here, the judges of the United States Circuit Court of Appeals for the First Circuit make return of this writ by annexing hereto and sending herewith, under the seal of the said United States Circuit Court of Appeals a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, John G. Stetson, clerk of said United States Circuit Court of Appeals for the First Circuit, have hereto

set my hand and the seal of said court at Boston in the First Judicial Circuit this fourteenth day of May, A. D. 1907.

[SEAL.] JOHN G. STETSON, *Clerk.*

c United States Circuit Court of Appeals for the First Circuit.
October term, 1905.

NATIONAL EXCHANGE BANK OF PROVIDENCE, defendant, plaintiff in error, *v.* UNITED STATES OF AMERICA, plaintiff, defendant in error.	No. 617. Error to the Circuit Court of the United States for the District of Massachusetts.

Judgment in Circuit Court (Lowell, J.), October 2, 1905.

Certified copy of record and all proceedings in said cause, to and including May 14, 1907.

1 United States Circuit Court of Appeals for the First Circuit.
October term, 1905.

NATIONAL EXCHANGE BANK OF PROVIDENCE, defendant, plaintiff in error, *v.* UNITED STATES OF AMERICA, plaintiff, defendant in error.	No. 617.

Writ of error.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the Judges of the Circuit Court of the United States for the District of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between the United States of America, plaintiff, and the National Exchange Bank of Providence, a national banking association duly created and existing under the laws of the United States of America, and having its usual place of business at Providence, in the District of Rhode Island, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning

the same, to the United States Circuit Court of Appeals for the First Circuit, together with this writ, so that you have the same at the city of Boston, Massachusetts, on the eighth day of November next, in the said Circuit Court of Appeals, that, the record and
2 proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of October, in the year of our Lord one thousand nine hundred and five.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

FRANCIS C. LOWELL,
U. S. Circuit Judge.

Return of Circuit Court on writ of error.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss.

And now, here, the judges of the Circuit Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said Circuit Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the United States Circuit Court of Appeals for the First Circuit, as within commanded.

In testimony whereof, I, Alexander H. Trowbridge, Clerk of said Circuit Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said court, this seventh day of November, A. D. 1905.

[SEAL.] ALEX. H. TROWBRIDGE, *Clerk.*

3 TRANSCRIPT OF RECORD OF CIRCUIT COURT.

(Filed in Circuit Court of Appeals November 8, 1905.)

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on the last Tuesday of February, being the twenty-eighth day of February in the year of our Lord one thousand nine hundred and five.

Before the honorable William L. Putnam, Circuit Judge.

UNITED STATES OF AMERICA, PLAINTIFF,
v.
NATIONAL EXCHANGE BANK OF BOSTON ET AL., defendants.
No. 1191, law docket.

Writ.

MASSACHUSETTS DISTRICT, *ss:*

[L. S.] The President of the United States of America, to the marshal of our District of Massachusetts of his deputy, greeting:

We command you to attach the goods or estate of the National Exchange Bank, of Boston, a national banking association duly and legally organized and established under and by virtue of the laws of the United States of America, located and having its usual place of business at Boston, in our District of Massachusetts, to the value of fourteen thousand dollars, and summon it (if it may be found in your district) to appear before our judges of our Circuit Court of said United States, for the First Circuit, next to be holden at Boston, within and for our said District of Massachusetts, on the fifteenth day of October next; then and there in our said court to answer unto the United States of America.

In an action of contract.

4 To the damage of the said United States, as they say, the sum of fourteen thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with you doings therein.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, at Boston, the twenty-seventh day of August in the year of our Lord one thousand nine hundred and one.

L. C. TUCKER, *Deputy Clerk.*

Officer's return on writ.

BOSTON, *August 27, 1901.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

Pursuant hereunto I have this day attached a chip, the property of the within-named defendant corporation, and afterwards, on the same day, I summoned said defendant to appear at court as within directed by giving to Charles A. Price, cashier of said defendant corporation, an original summons in hand at Boston.

BENJAMIN P. PICKERING,
Deputy U. S. Marshal.

Fees:

Service,	$2.00
Travel,	.12
	$2.12

This cause was duly entered at the October term of this court, A. D. 1901, when and where the parties appeared by their respective attorneys.

At the entry of said cause the following plaintiff's declaration was filed:

Plaintiff's declaration.[a]

(Filed October 15, 1901.)

Count 1. And the plaintiffs say that the pension agent of the plaintiffs at Boston, in said district, lawfully issued a certain check, drawn on the assistant treasurer of the plaintiffs at said Boston, payable to the order of Hannah Smith, a copy whereof with the indorsements thereon is hereto annexed marked "A"; that a signature purporting to be the true and genuine signature of the said Smith was afterwards indorsed thereon; that said signature in fact was not the true and genuine signature of the said Smith, but was false, forged, and counterfeit; that the defendant indorsed said check bearing said false, forged, and counterfeit signature and presented it for payment to the said assistant treasurer, who paid the amount of the same to the defendant. And the plaintiffs say the defendant owes them the amount of said check.

Count 2. And the plaintiffs say the defendant owes them the sum of thirty-six dollars received by the defendant to the use of the plaintiffs.

And the plaintiffs say the foregoing counts numbered 1 and 2 are for one and the same cause of action.

UNITED STATES OF AMERICA,
by H. P. MOULTON,
United States Attorney.

At the said term the following demurrer was filed:

Demurrer of National Exchange Bank of Boston.

(Filed October 25, 1901.)

Now comes the defendant in the above-entitled case and demurs to each and every count of the plaintiff's declaration, and for cause of demurrer to each count shows:

1. That said count does not state a legal cause of action;

2. That no demand is alleged on the defendant for the amount of the check therein specified;

3. That no notice was given to the defendant that said check bore a false, forged, and counterfeit signature;

4. That no reason is alleged for not making such demand or giving the defendant such notice; or

[a] See Stipulation as to Record, page —, and Motion to Amend Declaration, page —. John G. Stetson, Clerk.

5. That the defendant had, up to the time of the bringing of the suit, any knowledge that said check bore a false, forged, and counterfeit signature.

By its attorney,

CHARLES K. COBB.

6 I hereby certify that I am of opinion that there is such probable ground in law for this demurrer as to make it a fit subject for judicial inquiry and trial, and that it is not intended merely for delay.

CHARLES K. COBB.

This cause was thereupon set down for hearing and fully heard by the court, on demurrer, the honorable Francis C. Lowell, district judge for the district of Massachusetts, sitting on the twenty-ninth day of April, A. D. 1902.

This cause was thence continued under advisement to the May term, A. D. 1902, when the opinion of the court was announced overruling said demurrer.

At the said term the following answer was filed:

Answer of National Exchange Bank of Boston.

(Filed June 2, 1902.)

Now comes the defendant and denies each and every allegation in the plaintiff's writ and declaration contained.

And the defendant further answering to all the counts in the plaintiff's declaration says that if the plaintiff shall prove that it paid to the defendant the amount of the checks or any of them set forth in the declaration, and that the signature of the indorser thereon, or on any of them, was a forgery, that the plaintiff, although long since having discovered the forgery, has given to the defendant no notice thereof, and made upon the defendant no demand therefor, and that this suit is not brought within a reasonable time after the alleged payment to the defendant of the checks respectively set forth in the plaintiff's declaration.

And the defendant further answering says that if the plaintiff shall prove that it paid to the defendant the amount of the checks, or any of them, set forth in the declaration, and that the signature of the indorser thereon, or on any of them, was a forgery, all the checks mentioned in the plaintiff's declaration were held by the defendant as agent for collection, and that believing the signatures thereon were

7 the genuine signatures of the indorsers, it has paid out the money collected by it to the person or persons or corporations depositing said checks for collection.

And the defendant further answering says that if the plaintiff shall prove that it paid to the defendant the amount of the checks,

or any of them, set forth in the declaration, and that the signature of the indorser thereon, or on any of them, was a forgery, the plaintiff was in possession of the original signatures of the payees of said checks, which it had obtained for the purpose of verifying the signatures of the payees of said checks, and the plaintiff was negligent in the payment of said checks with the indorsements thereon forged as alleged in the declaration, or in not earlier discovering the alleged forgeries.

By its attorney,

CHARLES K. COBB.

This cause was thence continued from term to term to the October term, A. D. 1903, when the following motion to amend writ was filed and allowed:

Motion to amend writ.

(Filed and allowed October 22, 1903.)

Now comes the United States of America, by Henry P. Moulton, United States attorney, and moves to amend its writ in the above-entitled cause, in pursuance of an agreement heretofore made between said United States attorney and Charles K. Cobb, attorney for the National Exchange Bank of Boston, and Theodore Francis Green, attorney for the National Exchange Bank of Providence, as follows, to wit: To amend its writ by inserting therein after the word "Massachusetts," in the ninth line thereof, the words "and the National Exchange Bank of Providence, a national banking association, duly created and existing under the laws of the United States of America, and having its usual place of business at Providence, in the District of Rhode Island;" and by inserting in the eleventh line thereof, after the word "summon," the words "the defendants:" and by inserting in the twelfth line thereof, after the word "if," the word "they;" so that when amended said writ should read as follows:

8 [SEAL.] MASSACHUSETTS DISTRICT, *ss:*

The President of the United States of America, to the marshal of our District of Massachusetts, or his deputy, greeting:

We command you to attach the goods or estate of the National Exchange Bank of Boston, a national banking association duly and legally organized and established under and by virtue of the laws of the United States of America, located and having its usual place of business at Boston, in our District of Massachusetts, and the National Exchange Bank of Providence, a national banking association duly created and existing under the laws of the United States of America, and having its usual place of business at Providence, in the District of Rhode Island, to the value of fourteen thousand dollars, and

summon the defendants (if they may be found in your District) to appear before our judges of our Circuit Court of said United States, for the First Circuit, next to be holden at Boston, within and for our said District of Massachusetts, on the fifteenth day of October next, then and there in our said court to answer unto the United States of America. In an action of contract.

To the damage of the said United States, as they say, the sum of fourteen thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Boston, the twenty-seventh day of August, in the year of our Lord one thousand nine hundred and one.

L. C. TUCKER,
Deputy Clerk.
HENRY P. MOULTON,
U. S. Attorney.

Assented to.

CHARLES K. COBB,
THEODORE FRANCIS GREEN,
Attorneys for the National Exchange Bank of Boston, and National Exchange Bank of Providence.

At the same term the following motion to amend declaration was filed and allowed:

9 *Motion to amend declaration.*

(Filed and allowed October 22, 1903.)

Now comes the United States of America, by Henry P. Moulton, United States attorney, and moves to amend its declaration in the above-entitled cause by striking out the name of the National Exchange Bank of Boston, defendant therein, and inserting as defendant the name of the National Exchange Bank of Providence, and by striking out counts numbered 13, 14, 91, 92, 113, 114, 161, 162, 163, 164, 227, 228, 241, 242, 301, 302, 303, 304, 331, 332, 377, 378, 413, 414, 61, 62, 63, 64, 65, and 66.

HENRY P. MOULTON,
U. S. Attorney.

Assented to.

CHARLES K. COBB,
THEODORE FRANCIS GREEN,
Attorneys for National Exchange Bank of Boston and National Exchange Bank of Providence.

Also at the same term the following agreement for entry of judgment for National Exchange Bank of Boston was filed:

Agreement for entry of judgment for National Exchange Bank of Boston.

(Filed October 22, 1903.)

In the above-entitled cause it is agreed between parties that judgment may be entered for the National Exchange Bank of Boston, without costs.

CHARLES K. COBB,
THEODORE FRANCIS GREEN,
Attorney for Defendants.
HENRY P. MOULTON,
U. S. Attorney.

Thereupon, to wit, October 22, 1903, judgment was entered for the National Exchange Bank of Boston, pursuant to the foregoing agreement, the honorable Francis C. Lowell, district judge, as aforesaid, sitting.

Also at the same term the following answer of the National Exchange Bank of Providence was filed:

Answer of National Exchange Bank of Providence.

(Filed October 28, 1903.)

Now comes the above-named defendant and denies each and every allegation in the plaintiff's writ and declaration contained.

And the defendant, further answering to all the counts in the plaintiff's declaration, says that if the plaintiff shall prove that it paid to the defendant the amount of the checks, or any of them set forth in the declaration, and that the signature of the indorser thereon, or on any of them, was a forgery, that the plaintiff, although long since having discovered the forgery, has given to the defendant no notice thereof and made upon the defendant no demand therefor, and that this suit is not brought within a reasonable time after the alleged payment to the defendant of the checks respectfully set forth in the plaintiff's declaration.

And the defendant, further answering, says that if the plaintiff shall prove that it paid to the defendant the amount of the checks, or any of them, set forth in the declaration, and that the signature of the indorser thereon, or on any of them, was a forgery, the plaintiff was in possession of the original signatures of the payees of said checks, which it had obtained for the purpose of verifying the signatures of the payees of said checks, and the plaintiff was negligent

in the payment of said checks with the indorsements thereon forged as alleged in the declaration, or in not earlier discovering the alleged forgeries.

By its attorney.

CHARLES K. COBB.

This cause was thence continued to the February term, A. D. 1904, when the following-agreed statement of facts was filed:

11 *Agreed statement of facts.*

(Filed March 14, 1904.)

It is stipulated in the above-entitled action that the following facts so far as competent and material are true:

1. All of the checks declared on were issued by the United States pension agent at Boston on the dates set forth in the respective copies, upon the receipt of vouchers, regular in form, and purporting to be executed by the pensioners named therein (the originals of which may be referred to at the trial, and made exhibits), in accordance with the requirements of law contained in sections 4764 and 4765 of the Revised Statutes of the United States relating to the method of paying pensions. Specimen copies of the vouchers sent out to pensioners at the beginning of each quarter at the present time are hereto annexed, marked "A," "B," and "C." The form of voucher in use at the Boston pension agency at the time of issue of the checks in suit was similar to those annexed to this statement.

2. The plaintiff had on its files the signatures of each of the pensioners whose names were forged on vouchers returned prior to the death or remarriage of such pensioners. Such vouchers are agreed to be in evidence and may be referred to by either party.

All the payees named in said checks had formerly been pensioners of the United States, but before the issue of said checks fifteen had died, and the other three, who were widows, had remarried. These facts were not known to said pension agent at the time of the issue of said checks, nor to the defendant at the time of payment.

3. All the checks described in plaintiff's declaration were transmitted by mail by the pension agent directly to the address of the pensioner given in the voucher, in accordance with the provisions of R. S. 4765, none of these supposed pensioners having been theretofore required by the Commissioner of Pensions to appear personally at the agency in Boston to receive his pension.

4. Persons whose names are borne on the rolls as pensioners of the United States are not required by any rule or regulation of the Department of the Interior to furnish the pension agents of their respective districts any evidence of their right to receive a
12 pension other than the vouchers mentioned in R. S. 4764.

When two successive quarters elapse without the return by a pensioner of the vouchers sent out by the pension agent, it is cus-

tomary for the agent to send to the United States postmaster at the place of the pensioner's last known address a card properly filled up, of which the following is the form in use at the Boston pension agency:

UNITED STATES PENSION AGENCY.

At ——— ———.
No. ——. ———, ———, 190–.

SIR: The last known post-office address of ——— ——— was given as ——— ———. If this pensioner is still living, please give me present address. If pensioner is dead, kindly state the date of death.

——— ———, *U. S. Pension Agent.*

Present address: ——— ———.
Died ——— —, ——. ——— ———, *Postmaster.*

This is the ordinary method of obtaining information as to the whereabouts of pensioners, or as to their decease or remarriage. But in the present cases no such information was requested or received, for the reason that no interruption occurred in the receipt by the agent of the executed vouchers.

5. The pension vouchers received by the pension agent at Boston, upon which said checks were issued, were fraudulently filled up and executed, and the supposed signatures of pensioners thereto were forgeries. Said checks with the forged signatures thereon were cashed by the defendant, who immediately indorsed the said checks to a national bank in Boston for collection. The checks were presented by the collecting bank at the subtreasury of the United States in Boston. The collecting bank received payment of the same and accounted for such payment to the defendant.

6. In May, 1897, a special examiner of the Pension Bureau was detailed at Providence to investigate the case of Leonard J. A. Mooy, one of the deceased pensioners, to whom certain of the checks in suit were issued.

13 June 18, 1897, the examiner reported to the Bureau that the signatures of said checks were probably forged by William A. Munson. December 18, 1897, notice was given to defendants by the United States attorney at Providence that Mooy's indorsements to said checks were forged and that at a proper time reclamation would be made for the money paid for them. Said notice was in the following form: "I am instructed by the honorable Commissioner of Pensions to notify you that checks (description omitted) drawn by H. B. Lovering, United States pension agent, Boston, on the assistant United States treasurer, Boston, to the order of L. J. Mooy, for the respective sums of thirty-six dollars were paid through your bank upon its indorsement, and upon the forged indorsement or mark as the Government now claims of said Mooy, and that at a proper time reclamation will be made for the money paid upon said checks by the Government."

Upon further investigation, begun in February, 1898, the other checks were discovered to be forgeries. It is agreed that the dates when such forgeries were discovered are as follows:

Orrin Morton, February 19, 1898.
Mary Lavens, February 19, 1898.
Martha Crompton, February 19, 1898.
Eliza Kennedy, February 25, 1898.
Almira Newell, February 26, 1898.
Abby A. Thurber, February 28, 1898.
Margaret Duff, February 28, 1898.
John O. Hopkins, March 2, 1898.
Hannah Smith, March 5, 1898.
Mahala B. Jaques, March 9, 1898.
Julia Carey, March 11, 1898.
Margaret Sliney, March 18, 1898.
Sarah J. Mott, March 23, 1898.
Diana McCaslin, March 26, 1898.
Susan Raynor, March 31, 1898.
Charlotte Lewis, April 19, 1898.
Susan A. Lake, May 21, 1898.
Mary Shambell, May 28, 1898.

7. At the June term, A. D. 1898, of the United States Circuit Court for the District of Rhode Island one William A. Munson,
14 now deceased, pleaded nolo contendere to an indictment charging him with the crime of uttering and publishing a certain pension check with a false and fraudulent indorsement thereon. Said check is numbered 109188, drawn March 10, 1897, to the order of Charlotte Lewis for twenty-four dollars. A copy of said check is annexed to the declaration in the suit of the United States of America against the National Exchange Bank, number 1191. June 22, 1898, said Munson was sentenced for this crime to imprisonment in the Rhode Island State prison for the term of five years. December 16, 1898, while said Munson was serving his said sentence, he made a declaration in writing in which he admitted that he forged the payees' names to certain pension checks, knowing at the time that said payees were either dead or remarried. A copy of said declaration, omitting the enumeration and description of the checks, is hereto annexed marked "D." All of the checks herein declared on are included in the list contained in Munson's said declaration.

8. July 22, 1898, the United States attorney at Providence, Rhode Island, in behalf of the United States, made a demand in writing upon the defendant for refund of the sums paid by the subtreasury upon the checks in suit, except the following, as to which no notice was given, viz:

Mary Shambell, Nos. 480897, 518360, 558286, 631549, 682306, 735448, 788387, 846103, 902639, 957226.

Susan A. Lake, Nos. 716017, 826265, 931241.

Said demand was in the following form:

"I am instructed by the honorable Commissioner of Pensions to notify you that the United States Government hereby makes reclamation for the money paid by the United States pension agency at Boston on the following-described pension checks, all of which were paid through your bank and upon its indorsement, and at the time of payment bore the forged indorsement of the various payees therein named, which forged indorsements have been discovered by the Government within the last eighteen months and very largely since August, 1897."

A similar notice of reclamation was given by the United States attorney at Providence and served by the United State marshal upon the Providence banks September 6, 1898. No other notice was ever given.

The defendants refused to refund the sums so demanded.

CHARLES K. COBB,
THEODORE FRANCIS GREEN,
Attorneys for Defendant.
HENRY P. MOULTON,
U. S. Attorney.

[MEMORANDUM. Specimen copies of the vouchers "A," "B," and "C," annexed to the foregoing agreed statement of facts, are bound in at the end of this record. John G. Stetson, clerk.]

"D."

(Copy.)

Deposition.

CASE OF WILLIAM A. MUNSON.

On this sixteenth day of December, 1898, at Rhode Island State Prison, Cranston, county of Providence, State of Rhode Island, before me, W. L. Harris, a special examiner of the Bureau of Pensions, personally appeared William A. Munson, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination of aforesaid claim for pension, deposes and says:

I am fifty-eight years of age; my post-office address is Howard road, Rhode Island State Prison, Cranston, Providence County, R. I.

I was acquainted with the following-named pensioners, who resided in or near Providence, R. I.:

	Pensioned under					
Julia Cary,	Cert. No. 338,949,	who died	March	5, 1895
Margaret Duff,	" " 408,209,	" "	June	7, 1897
Marguerite Gelin,	" " 383,125,	" "	April	23, 1897
John O. Hopkins,	" " 600,924,	" "	Feb.	3, 1892

	Pensioned under					
Mahala B. Jaques,	Cert. No.		236,971,	who died	June	29, 1886
Eliza Kennedy,	"	"	125,536,	" "	July	2, 1890
Susan A. Lake,	"	"	266,920,	" "	Oct.	16, 1889
16 Mary Lavens,	"	"	289,736,	" "	Sept.	10, 1895
Charlotte Lewis,	"	"	318,613,	" "	Jan.	14, 1892
Diana McCaslin,	"	"	14,783,	" "	May	4, 1890
Leonard J. A. Mooy,	"	"	573,005,	" "	Sept.	30, 1895
Orrin Morton,	"	"	251,104,	" "	Feb.	4, 1897
Almira Newell,	"	"	197,353,	" "	March	17, 1887
Susan Rayner,	"	"	268,102,	" "	Jan.	26, 1896
Margaret Sliney,	"	"	392,893,	" "	May	23, 1896
Hannah Smith,	"	"	319,345,	" "	Nov.	10, 1896
Abby A. Thurber,	"	"	430,878,	" "	Jan.	24, 1897
Sarah J. Mott,	"	"	352,115,	remarried	Aug.	22, 1892
Mary Shambell, and	"	"	6,580,	"	Sept.	28, 1892
Martha Crompton, and who died Jan. 22, 1895.	"	"	209,716,	"	Aug.	20, 1884

After the death or remarriage of the pensioners herein named, the checks for quarterly payments of pension in their several pension claims—which checks were drawn by the United States pension agent, Boston, Massachusetts, to their respective orders—came into my possession, and I received the proceeds of each of said checks, having previously indorsed the name of the particular payee thereon, knowing the payee to be dead.

The checks now exhibited to me are those which were received by me, as before stated, and are described as follows:

[List of checks omitted.]

I hereby certify that in making acknowledgment to the forgery of the pension checks herein enumerated and described I did so of my own free will and accord, and that no promises whatever were held out to me, and neither was I coerced into so doing. The checks bearing name of payee, number and date of issue corresponding to this schedule were all shown to me, and I recognized the name of payee on each check as a forgery, the same being committed by me.

WILLIAM A. MUNSON.

Mr. Munson (William A. Munson) acknowledged the forgery to all pension checks which were shown to him and which corre-
17 sponded in number, name of payee, date of issue and amount, to those enumerated and described in the schedule forming a part hereof, in my presence.

PHILIP R. WEAVER,
Howard, R. I.

J. ALBERT MILLERD,
Howard, R. I.

Sworn to and subscribed before me this sixteenth day of December, 1898, and I certify that the contents were fully made known to deponent before signing.

W. L. HARRIS,
Special Examiner.

This cause was thence continued from term to term to the present February term, A. D. 1905, when the following motion to amend answer of the National Exchange Bank of Providence, is filed and allowed by consent:

Motion to amend answer of National Exchange Bank of Providence.

(Filed and allowed by consent March 7, 1905.)

Now comes the defendant, the National Exchange Bank of Providence, and moves to amend its answer by inserting at the end thereof the following:

"This defendant further answering says that if any notice was given to this defendant by the plaintiff of said forgeries, it was not given until an unreasonable time after the discovery of the same, and if the plaintiff had not been negligent in discovery of said forgeries, or if it had given notice promptly of said forgeries, this defendant would have been able to reimburse itself for the money paid out by it to the person or persons or corporations to whom said money was paid."

By its attorney.

CHARLES K. COBB.

18 This cause is thereupon set down for hearing and is fully heard by the court, on agreed statement of facts, the honorable Francis C. Lowell, district judge, as aforesaid, sitting.

On the second day of October, A. D. 1905, the opinion of the court is announced, and the following findings of the court is filed:

Findings of the court.

October 2, 1905.

I find for the plaintiff in the sum of five thousand nine hundred and two dollars and eighty cents ($5,902.80), with interest from July 22, 1898, amounting to two thousand five hundred and forty-six dollars and nine cents ($2,546.09), being the date of demand on said checks according to the agreed facts.

I further find for the plaintiff in the sum of one hundred and eight dollars ($108), being the amount of the Mooy checks, together with interest from December 18, 1897, the date of the demand, amounting to fifty dollars and forty-four cents ($50.44).

I further find for the plaintiff in the sum of three hundred and fifty-one dollars and twenty-seven cents ($351.27), the amount of the

checks of Shambell and Lake, with interest from August 27, 1901, the date of the writ, amounting to eighty-six dollars and twenty-two cents ($86.22).

Also on the second day of October, A. D. 1905, the following defendant's bill of exceptions is filed and allowed:

Defendant's bill of exceptions.

(Filed and allowed October 2, 1905.)

This was an action of contract brought by the United States against the defendant bank to recover back money paid to the defendant by the United States on certain pension checks, a detailed list of which is set forth in the declaration, indorsed by the defendant and by the National Exchange Bank of Providence, on which the indorsements of the pensioners are alleged to be forged. The writ was dated August 27, 1901. The writ was amended before trial, so as to
19 make the National Exchange Bank of Providence, a party defendant, and judgment was entered for the National Exchange Bank of Boston, so that the real party defendant is the National Exchange Bank of Providence.

The case was tried before the court, jury being waived, on an agreed statement of facts, a copy of which is hereto annexed.

The defendant asked for the following rulings on questions of law:

1. The agreed statement of facts did not warrant a finding for the plaintiff on all of the checks.

2. The same ruling is requested as to the amount paid by the plaintiff on each check.

3. On the agreed statement of facts the finding should be for the defendant.

4. The same ruling is requested as to the amount paid by the plaintiff on each check.

5. It is unnecessary for the defendant to produce any evidence of damage caused by the delay in notifying the defendant of the forgeries. Such damage is presumed.

6. The plaintiff cannot recover the amount paid by it on any check of the forgery of the indorsement of which it failed to give notice within a reasonable time after the discovery of such forgery.

7. The plaintiff cannot recover the amount paid on any check, of the forgery of the indorsement on which it failed to give notice in a reasonable time after the payment of the check.

8. The plaintiff cannot recover the amount paid on any check of the forgery of the indorsement of which it failed to give any notice.

The court declined to give the above rulings, or any of them, and found for the plaintiff in the sum of nine thousand forty four dollars and eighty-two cents, which was the amount paid on all the checks

mentioned in the declaration, and interest thereon from the date of demand therein to the date of the finding; to which refusals to rule the defendant duly excepted.

By its attorney.

CHARLES K. COBB.

October 2, 1905.

Allowed:

FRANCIS C. LOWELL, *U. S. Circuit Judge.*

20 Also on the second day of October, A. D. 1905, the following judgment is entered:

Judgment.

October 2, 1905.

It is thereupon considered by the court, to wit, October 2, 1905, the Honorable Francis C. Lowell, circuit judge, sitting, that the said United States of America, plaintiff, recover of the said the National Exchange Bank of Providence, defendant, the sum of nine thousand forty-four dollars and eighty-two cents damages.

A true record.

Attest:

ALEX H. TROWBRIDGE, *Clerk.*

Stipulation as to record.

(Filed October 16, 1905.)

Whereas the declaration as amended contains two counts on each check, and as each set of counts on each check is of the same tenor, with the exception of the description of the check,

It is stipulated that the first two counts only of the declaration shall be included in the transcript of record, and that the list of checks following is a correct list of the checks described in the declaration; and,

Whereas the original agreed statements of facts is on file,

It is stipulated that the copy annexed to the bill of exceptions shall not be included in the transcript of record.

WILLIAM H. GARLAND,
Assistant U. S. Attorney.

CHARLES K. COBB,
Attorney for Defendant.

List of checks.

No.	Date.	Payee.	Amount.
216543.	Feb. 3, 1897.	Hannah Smith	$36.00
405319.	March 9, 1897.	" "	36.00
409260.	June 9, 1897.	" "	36.00
67769.	July 8, 1896.	Margaret Sliney	24.00
80656.	Sept. 16, 1896.	Margaret Sliney	24.00
21 97274.	Dec. 10, 1896.	" "	24.00
365536.	June 10, 1897.	" "	24.00
480897.	Jan. 28, 1893.	Mary Shambell	27.27
518360.	March 11, 1893.	" "	24.00
558286.	June 10, 1893.	" "	24.00
631549.	Sept. 14, 1893.	" "	24.00
682306.	Dec. 11, 1893.	" "	24.00
735448.	March 12, 1894.	" "	24.00
788387.	June 9, 1894.	" "	24.00
846103.	Sept. 10, 1894.	" "	24.00
902639.	Dec. 11, 1894.	" "	24.00
957226.	March 4, 1895.	" "	24.00
19007.	June 8, 1895.	" "	24.00
67518.	Sept. 10, 1895.	" "	24.00
118637.	Dec. 10, 1895.	" "	24.00
62400.	March 9, 1896.	" "	24.00
160153.	June 5, 1896.	" "	24.00
69924.	Sept. 10, 1896.	" "	24.00
86933.	Dec. 10, 1896.	" "	24.00
107910.	March 10, 1897.	" "	24.00
146585.	April 27, 1896.	Susan Rayner	36.00
138342.	June 5, 1896.	" "	36.00
403327.	March 9, 1897.	" "	36.00
418135.	June 9, 1897.	" "	36.00
557173.	June 10, 1893.	Almira Newell	36.00
608523.	Sept. 14, 1893.	" "	36.00
658333.	Dec. 9, 1893.	" "	36.00
714284.	March 10, 1894.	" "	36.00
849085.	Sept. 21, 1894.	" "	36.00
878613.	Dec. 10, 1894.	" "	36.00
935087.	March 8, 1895.	" "	36.00
44909.	Sept. 23, 1895.	" "	36.00
111282.	Dec. 14, 1895.	" "	36.00
129220.	March 9, 1896.	" "	36.00
138148.	June 5, 1896.	" "	36.00
164983.	Sept. 25, 1896.	" "	36.00
186952.	March 9, 1897.	" "	36.00
420183.	June 9, 1897.	" "	36.00
954121.	March 9, 1895.	Julia Cary	24.00
13412.	June 8, 1895.	" "	24.00
68712.	Sept. 23, 1895.	" "	24.00
105121.	Dec. 10, 1895.	" "	24.00
60177.	March 10, 1896.	" "	24.00
52953.	June 4, 1896.	" "	24.00
83635.	Sept. 23, 1896.	" "	24.00
85866.	Dec. 10, 1896.	Julia Cary	24.00
22 499315.	March 10, 1893.	Sarah J. Mott	36.00
557274.	June 10, 1893.	" " "	36.00
608347.	Sept. 13, 1893.	Sarah J. Mott	36.00
662514.	Dec. 9, 1893.	" " "	36.00
714277.	March 10, 1894.	" " "	36.00
767370.	June 8, 1894.	" " "	36.00
419317.	June 9, 1897.	" " "	36.00
849955.	Sept. 21, 1894.	" " "	36.00
883196.	Dec. 10, 1894.	" " "	36.00
935244.	March 9, 1895.	" " "	36.00
982947.	June 10, 1895.	" " "	36.00
44942.	Sept. 23, 1895.	" " "	36.00
88574.	Dec. 9, 1895.	" " "	36.00

No.	Date.	Payee.	Amount.
127108.	March 9, 1896.	Sarah J. Mott	$36. 00
138318.	June 5, 1896.	" " "	36. 00
164939.	Sept. 23, 1896.	" " "	36. 00
181132.	Dec. 9, 1896.	" " "	36. 00
404158.	March 9, 1897.	" " "	36. 00
406433.	March 29, 1897.	Orrin Morton	36. 00
409826.	June 7, 1897.	" "	36. 00
131469.	Jan. 24, 1896.	Leonard J. A. Mooy	36. 00
132650.	March 7, 1896.	" " " "	36. 00
146941.	June 4, 1896.	" " " "	36. 00
699089.	Sept. 13, 1893.	Diana McCaslin	36. 00
716092.	March 10, 1894.	" "	36. 00
709035.	June 8, 1894.	" "	35. 00
828259.	Sept. 10, 1894.	" "	36. 00
930015.	March 9, 1895.	" "	36. 00
982770.	June 10, 1895.	" "	36. 00
45123.	Sept. 9, 1895.	" "	36. 00
88438.	Dec. 9, 1895.	" "	36. 00
94941.	Mar. 9, 1896.	" "	36. 00
138271.	June 5, 1896.	" "	36. 00
169165.	Sept. 10, 1896.	" "	36. 00
182117.	Dec. 9, 1896.	" "	36. 00
405051.	Mar. 9, 1897.	" "	94. 80
270020.	Jan. 14, 1892.	Charlotte Lewis	24. 00
337554.	May 18, 1892.	" "	24. 00
515102.	Mar. 10, 1893.	" "	24. 00
577264.	June 12, 1893.	" "	24. 00
625673.	Sept. 13, 1893.	" "	24. 00
667492.	Dec. 12, 1893.	" "	24. 00
730639.	Mar. 12, 1894.	" "	24. 00
775813.	June 9, 1894.	" "	24. 00
833624.	Sept. 11, 1894.	" "	24. 00
890063.	Dec. 10, 1894.	Charlotte Lewis	24. 00
23 954006.	Mar. 9, 1895.	" "	24. 00
16071.	June 8, 1895.	" "	24. 00
62001.	Sept. 10, 1895.	Charlotte Lewis	24. 00
112390.	Dec. 10, 1895.	" "	24. 00
55035.	Mar. 10, 1896.	" "	24. 00
150079.	June 4, 1896.	" "	24. 00
74627.	Sept. 11, 1896.	" "	24. 00
98054.	Dec. 10, 1896.	" "	24. 00
374407.	June 10, 1897.	" "	24. 00
55391.	Sept. 10, 1895.	Mary Lavens	24. 00
115802.	Dec. 23, 1895.	" "	24. 00
61361.	March 10, 1896.	" "	24. 00
151054.	June 4, 1896.	" "	24. 00
83647.	Sept. 23, 1896.	" "	24. 00
109279.	March 10, 1897.	" "	24. 00
367392.	June 10, 1897.	" "	36. 00
716017.	March 10, 1894.	Susan A. Lake	36. 00
826265.	Sept. 10, 1894.	" " "	36. 00
931241.	March 9, 1895.	" " "	36. 00
983398.	June 10, 1895.	" " "	36. 00
92239.	Dec. 9, 1895.	" " "	36. 00
128106.	March 9, 1896.	" " "	36. 00
138181.	June 5, 1896.	" " "	36. 00
169244.	Sept. 10, 1896.	" " "	36. 00
182140.	Dec. 9, 1896.	" " "	36. 00
397262.	March 9, 1897.	" " "	36. 00
297076.	Mar. 5, 1892.	Eliza Kennedy	36. 00
330057.	June 7, 1892.	" "	36. 00
394014.	Sept. 10, 1892.	" "	36. 00
500249.	March 10, 1893.	" "	36. 00
552296.	June 9, 1893.	" "	

No.	Date.	Payee.	Amount.
608278.	Sept. 13, 1892.	Eliza Kennedy	$36.00
663084.	Dec. 9, 1893.	" "	36.00
713365.	March 10, 1894.	" "	36.00
761970.	June 8, 1894.	" "	36.00
849947.	Sept. 21, 1894.	" "	36.00
883120.	Dec. 10, 1894.	" "	36.00
930180.	March 9, 1895.	" "	36.00
991317.	June 10, 1895.	" "	36.00
44935.	Sept. 23, 1895.	" "	36.00
92248.	Dec. 9, 1895.	" "	36.00
126207.	March 9, 1896.	" "	36.00
138293.	June 5, 1896.	" "	36.00
403088.	March 9, 1897.	" "	36.00
	417599. June 9, 1897.	Eliza Kennedy	36.00
24	739988. April 27, 1894.	Mahala B. Jaques	36.00
	849982. Sept. 21, 1894.	" " "	36.00
878421.	Dec. 10, 1894.	Mahala B. Jaques	36.00
934115.	March 8, 1895.	" " "	36.00
982763.	June 10, 1895.	" " "	36.00
44908.	Sept. 23, 1895.	" " "	36.00
87783.	Dec. 9, 1895.	" " "	36.00
127315.	March 9, 1896.	" " "	36.00
138137.	June 5, 1896.	" " "	36.00
164968.	Sept. 25, 1896.	" " "	36.00
174244.	Dec. 9, 1896.	" " "	36.00
416518.	June 9, 1897.	" " "	36.00
313620.	March 31, 1892.	John O. Hopkins	36.00
399912.	Sept. 8, 1892.	" " "	36.00
455286.	Dec. 8, 1892.	" " "	36.00
510481.	March 9, 1893.	" " "	36.00
571552.	June 8, 1893.	" " "	36.00
622703.	Sept. 12, 1893.	" " "	35.00
674813.	Dec. 8, 1893.	" " "	36.00
727498.	March 9, 1894.	" " "	36.00
778832.	June 7, 1894.	" " "	36.00
880054.	Dec. 8, 1894.	" " "	36.00
947576.	March 8, 1895.	" " "	36.00
58901.	Sept. 7, 1895.	" " "	36.00
109155.	Dec. 7, 1895.	" " "	36.00
133417.	March 7, 1896.	" " "	36.00
145203.	June 4, 1896.	" " "	36.00
168362.	Sept. 9, 1896.	" " "	36.00
176412.	Dec. 8, 1896.	" " "	36.00
395770.	March 8, 1897.	" " "	36.00
410472.	June 8, 1897.	" " "	36.00
375342.	June 10, 1897.	Margaret Duff	36.00
358657.	April 14, 1897.	Abby A. Thurber	24.00
521445.	Dec. 10, 1886.	Martha Crompton	24.00
547662.	March 7, 1887.	" "	36.00
574961.	June 11, 1887.	" "	36.00
621635.	Dec. 7, 1887.	" "	36.00
727633.	Dec. 6, 1888.	" "	36.00
610648.	Sept. 13, 1893.	" "	36.00
660255.	Dec. 9, 1893.	" "	36.00
768070.	June 8, 1894.	" "	36.00
825071.	Sept. 10, 1894.	" "	36.00
881305.	Dec. 10, 1894.	" "	36.00
933410.	March 9, 1895.	" "	36.00
	982775. June 10, 1895.	Martha Crompton	36.00
25	39175. Sept. 9, 1895.	" "	36.00
	94108. Dec. 9, 1895.	" "	36.00
126034.	March 9, 1896.	Martha Crompton	36.00
138024.	June 5, 1896.	" "	36.00
165101.	Sept. 10, 1896.	" "	36.00
185588.	March 9, 1897.	" "	36.00
419092.	June 9, 1897.	" "	36.00

Opinion of the circuit court.

MAY 26, 1902.

LOWELL, J. The plaintiff's declaration contains many counts arranged in pairs. The pairs are precisely similar except for the dates of the checks therein described. The first pair of counts reads as follows:

"Count 1. And the plaintiffs say that the pension agent of the plaintiffs at Boston, in said district, lawfully issued a certain check, drawn on the assistant treasurer of the plaintiffs, at said Boston, payable to the order of Mahala B. Jaques; a copy whereof with the indorsements thereon is hereto annexed, marked 'A;' that a signature, purporting to be the true and genuine signature of the said Jaques was afterwards indorsed thereon; that said signature, in fact, was not the true and genuine signature of the said Jaques, but was false, forged, and counterfeit; that the defendant indorsed said check bearing said false, forged, and counterfeit signature, and presented it for payment to the said assistant treasurer, who paid the amount of the same to the defendant. And the plaintiffs say the defendant owes them the amount of said check.

"Count 2. And the plaintiffs say the defendant owes them the sum of thirty-six dollars, received by the defendant to the use of the plaintiffs.

"A. United States pension agency, No. 297073.
" Boston, Mass., Mch 5 1892
"Assistant Treasurer of the United States
" Boston, Mass.
" Pay to the order of Mahala B. Jaques 9492 B81
" Thirty-six ^{100} Dollars. $36
" 36 Interior
" W. H. OSBORNE,
" *U. S. Pension Agent.*

" Paid Mar. 12, 1892
"ASST. TREAS., *Boston.*
" Indorsements:
" MAHALA B. JAQUES
" *Payee.*
" M. M. ANGELL

26 " Pay Nat. Bank of the Republic, Boston, or order, for collection, for account of First National Bank, Providence, R. I.
" C. E. LAPHAM, *Cashier.*

" Indorsement Guaranteed.
" Nat'l Bank of the Republic, Boston."

To this declaration the defendant demurred on the following grounds:

"1. That said count does not state a legal cause of action;

"2. That no demand is alleged on the defendant for the amount of the check therein specified;

"3. That no notice was given to the defendant that said check bore a false, forged, and counterfeit signature;

"4. That no reason is alleged for not making such demand or giving the defendant such notice; or

"5. That the defendant had, up to the time of the bringing of the suit, any knowledge that said check bore false, forged, and counterfeit signature."

Assuming for the sake of the argument that undue delay on the part of the plaintiff in notifying the defendant of the forgery will defeat the plaintiff's right to recover, this court has to decide if that delay must be negatived in the declaration, or should be set up by way of defence in the answer. The first count of the declaration says nothing about the matter one way or the other. That undue delay is matter of defence is pretty plain. The plaintiff's right of action arises from the mere retention by the defendant of money which, in justice, does not belong to the latter. "Money thus paid under a mistake of fact is recoverable, because it is paid without any actual consideration and can not equitably be retained." United States v. Park Bank (6 Fed. Rep., 852, 853). It has been decided that no allegation of demand upon the defendant is nesessary to a right of action. Sturgis v. Preston, 134 Mass., 372; Dill v. Wareham, 7 Met., 438. In United States v. Clinton Bank, 28 Fed. Rep., 357, it appears that the defence was set up in the answer. The demurrer, so far as it applies to the first count of the declaration, must therefore be overruled. The second count is plainly good.

Demurrer overruled.

27 *Opinion of the Circuit Court.*

October 2, 1905.

LOWELL, J. This was a suit at law to recover back money paid by the plaintiff to the defendant upon a pension check bearing a forged indorsement. By the agreed statement of facts it appears that the checks were issued quarterly by the United States pension agent at Boston between 1884 and 1897. Some of the persons to whose order the checks were drawn were then dead, others were remarried widows not entitled to a pension. On June 18, 1897, the special examiner of the Pension Bureau reported to the Bureau that the indorsements of some of the checks in suit were probably forged by Munson. On December 18, 1897, notice of these forgeries was given to the defendant by the United States attorney at Providence and the defendant was informed that at a proper time reclamation would be made upon it. At various dates between February 19 and May 28, 1898, the indorsements upon the other checks were discovered to be forgeries. On July 22 the United States attorney made demand upon the defendants. The writ was dated August 27, 1901. The defendant's amended answer set up that the suit was not brought within a reason-

able time after payment of the checks to the defendant; that notice of the forgeries was not given until unreasonable time after their discovery, and that if the plaintiff had not been negligent in the discovery or had promptly given notice thereof the defendant would have been able to reimburse itself for money paid out by it. No evidence appears of the last allegation except that above stated.

One who has paid money to another upon a check bearing a forged indorsement may ordinarily recover back the money paid, even though the other be an innocent holder of the check for value. As a general proposition, this is not disputed. But recovery can not be had where it would be inequitable, and especially where the negligence of the plaintiff in making the payment or his delay after discovering the forgery in notifying the defendant has damaged the latter. The defendant here relies upon the plaintiff's delay in giving notice of the forgery after its discovery. In dealing with

28 commercial paper the rights of the United States are in these respects like those of any other litigant. The delay was considerable—from two to six months. No reason for it is shown, and it must be taken to be unjustified. This, therefore, is the question presented for decision: If A by honest mistake pays money to B upon a check bearing a forged indorsement and then unnecessarily and unreasonably delays to notify B of the discovery of the forgery, can he recover back the money paid from B in the absence of evidence that the delay has worked damage to B?

Upon the whole, the authorities answer this question in the affirmative. Daniel on Neg. Inst. (4th ed.), par. 1372; *Oppenheim* v. *West Side Bank*, 50 N. Y. Sup., 148, 152; *Bank of Commerce* v. *Mechanics Bank*, 55 N. Y., 211, 215; *Kingston Bank* v. *Eltinge*, 40 N. Y., 391, 396; *Mayer* v. *Mayor of New York*, 63 N. Y., 455; *Iron City Bank* v. *Fort Pitt Nat. Bank*, 159 Pa., 46, 52; *Third Nat. Bank* v. *Allen*, 59 Mo., 310; *Koontz* v. *Central Bank*, 51 Mo., 275; *U. S.* v. *Park Bank*, 6 Fed. Rep., 852. In most of the cases cited to support the defendant's contention (see *U. S.* v. *Cooke*, F. C. 14, 855; *U. S.* v. *Cent. Bank*, 6 Fed. Rep., 134; *U. S.* v. *Clinton Bank*, 28 Fed. Rep., 357; *U. S.* v. *Exchange Bank*, 45 Fed. Rep., 163) there was little consideration of the case of delay without resulting damage as distinguished from that of delay with damage shown or reasonably inferred. Payment by mistake is the basis of the plaintiff's recovery. The right based on the mistake is effectual unless the plaintiff is estopped to assert it. Negligence without resulting damage does not create an estoppel. While delay is irritating, while in some cases it may give rise to a presumption of fact that damage has ensued, yet unless by some means or other damage to the defendant is shown mere delay is insufficient to defeat the plaintiff's recovery. In the case at bar damage is alleged, but the agreed facts contain no evidence to support the allegation.

Judgment to be entered for the plaintiff.

29 *Petition for writ of error.*

(Filed October 9, 1905.)

To the honorable the Justices of the United States Circuit Court of Appeals for the First Circuit, or any judge of the Circuit Court of the United States for said district:

And now comes the defendant, the National Exchange Bank of Providence, and complains that in the records and proceedings, and also in the rendition of judgment in the above-entitled action of contract between the United States of America and this defendant, tried in the Circuit Court of the United States for said circuit, at the February term, A. D. 1905, in which judgment was rendered against this defendant on the second day of October, A. D. 1905, manifest error hath intervened, to the great damage of the said defendant.

Wherefore it prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the United States Circuit Court of Appeals for the First Circuit aforesaid.

By its attorney.

CHARLES K. COBB.

Assignment of errors.

(Filed October 9, 1905.)

Now comes this defendant and says that in the records and proceedings of the Circuit Court of the United States for the First Circuit in the above-entitled case there is manifest error, to wit:

First. The said Circuit Court has erred in refusing to give the following rulings, as requested by this defendant, the court having declined to give the above rulings, or any of them, and found for the plaintiff for the total amount paid on all the checks mentioned in the declaration.

"1. The agreed statement of facts did not warrant a finding for the plaintiff on all of the checks.

"2. The same ruling is request' as to the amount paid by the plaintiff on each check.

"3. On the agreed statement of facts the finding should be for the defendant.

30 "4. The same ruling is requested as to the amount paid by the plaintiff on each check.

"5. It is unnecessary for the defendant to produce any evidence of damage caused by the delay in notifying the defendant of the forgeries. Such damage is presumed.

"6. The plaintiff cannot recover the amount paid by it on any check, of the forgery of the indorsement of which it failed to give notice within a reasonable time after the discovery of such forgery.

"7. The plaintiff can not recover the amount paid on any check, of the forgery of the indorsement on which it failed to give notice in a reasonable time after the payment of the check.

"8. The plaintiff can not recover the amount paid on any check, of the forgery of the indorsement of which it failed to give any notice."

NATIONAL EXCHANGE BANK OF PROVIDENCE,
By CHARLES K. COBB,
Its Attorney.

Bond on writ of error.

(Filed and approved October 9, 1905.)

Know all men by these presents, that we, the National Exchange Bank of Providence, as principal, and Nicholas Sheldon and Francis S. Brownell, as sureties, are held and firmly bound unto the United States of America in the full and just sum of fifteen thousand (15,000) dollars, to be paid to the said United States of America, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents. Sealed with out seals and dated this seventh day of October, in the year of our Lord one thousand nine hundred and five.

Whereas lately at a Circuit Court of the United States for the District of Massachusetts, in a suit depending in said court between United States of America and National Exchange Bank, judgment was rendered against the said National Exchange Bank, and the said National Exchange Bank having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of November, A. D. 1905.

31 Now, the condition of the above obligation is such, that if the said National Exchange Bank shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

NATIONAL EXCHANGE BANK, [SEAL.]
Providence, R. I.
By AUGUSTUS R. PIERCE, *Cashier.*
NICHOLAS SHELDON. [SEAL.]
FRANCIS S. BROWNELL. [SEAL.]

Sealed and delivered in presence of—
GEORGE G. WOOD, as to all.
HENRY FULLER, as to all.

Approved:

FRANCIS C. LOWELL,
U. S. Circuit Judge.

Citation on writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the United States of America, greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the eighth day of November next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Massachusetts, wherein the National Exchange Bank of Providence, a national banking association, duly created and existing under the laws of the United States of America, and having its usual place of business at Providence, in the district of Rhode Island, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Francis C. Lowell, judge of the Circuit Court of the United States for the District of Massachusetts, this tenth day of October, in the year of our Lord one thousand nine hundred and five.

FRANCIS C. LOWELL,
U. S. Circuit Judge.

32 *Acknowledgment of service on citation on writ of error.*

BOSTON, *October 30, 1905.*

Due and sufficient service of the within citation is hereby accepted in behalf of the United States, defendant in error.

MELVIN O. ADAMS,
U. S. Attorney.

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Alexander H. Trowbridge, clerk of the Circuit Court of the United States for the District of Massachusetts, within the First Circuit, certify that the foregoing is a true copy of the record in the cause entitled—

UNITED STATES OF AMERICA, PLAINTIFF,
v.
NATIONAL EXCHANGE BANK, OF PROVIDENCE, defendant. } No. 1191, law docket.

in said Circuit Court determined, the stipulation as to record, the opinions of the Circuit Court of May 26, 1902, and of October 2, 1905, the petition for writ of error, the assignment of errors, the bond on writ of error, and also the original citation upon the writ

of error issued in said cause, with the acknowledgment of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said district, this seventh day of November, A. D. 1905.

[SEAL.] ALEX. H. TROWBRIDGE, *Clerk.*

33 Roll No. ——.

(A.)

Army voucher No. ——.

INVALID.

June, 1903.

$——.

Return this voucher for payment to A. J. Hoitt, U. S. pension agent, Boston, Mass.

STATE OF ——, *County of* ——, *ss:*

I, —— ——, clerk of the —— Court of the county and State aforesaid, do hereby certify that —— —— is ——, duly commissioned and qualified, and that he has authority to administer oaths for general purposes; that his commission was dated on the —— day of ——, 1—, and will expire on the —— day of ——, 190–, and that his signature within written is genuine.

Given under my hand and the seal of said court this —— day of ——, 190–.

—— ——, *Clerk.*

Instructions to officer before whom this voucher is executed.

The magistrate must carefully compare this voucher with the pension certificate exhibited to him.

Vouchers may be executed before any officer authorized to administer oaths for general purposes. If he has a seal and is required by law to use it to authenticate his official acts, it must be affixed; if not, a certificate of the proper officer, showing the commencement and termination of his term of office, and his signature, must be filed in this agency. Vouchers may also be executed before fourth-class postmasters, their mailing stamps to be used as seals.

The officer will also see that the correct post-office address of the pensioner is inserted in face and in back of voucher, giving street and number (when so designated). He will also give his own post-office address after his official title on face of voucher.

No checks will be sent in care of any person.

The officer will be held strictly responsible for the correctness of his certificate of identity of pensioner, in every particular, pursuant to act of July 7, 1898.

Write name and P. O. address plainly here.

Name, ——— ———; street, ———; city or village, ———; county, ———; State, ———.

34 3—1000.

Roll No. ——.

Unless the instructions on face and back of this voucher are specifically followed the voucher will be returned for correction.

A "A" INVALID. A

Be it known, that I, ——— ———, do solemnly swear that I am the identical person named in pension certificate No. ——, dated the —— day of ———, 1—, in my possession, and now exhibited; that I served in Company ——, ——— Regiment, ——— Volunteers; that my name is inscribed on the rolls of the Boston Agency, at the rate of —— dollars per month ——; when there is a change in the rate, either by an increase, reissue, etc., note the former rate at which paid ———.

That I have not been employed or paid in the Army, Navy, or Marine of the United States from the [a] 4 day of Mar., 1903, to the present time; that I am entitled to the pension described in this voucher; that I have not forfeited my right, title, or interest therein; and that my present post-office address is No. ——, ——— street, county of ———, State of ———.

Street and number should be given.

(Pensioner's signature.) ——— ———

(Signature must be written letter for letter as it is written in the pension certificate.)

(If pensioner signs by mark, or illegibly, two witnesses who can write.)

———— ————.

———— ————.

Officer must make the contents of the affidavit fully known to the pensioner before signing or swearing.

The pension certificate must be exhibited to the magistrate when this voucher is executed.

---

[a] If the first payment, insert the date of the commencement of the pension. If not the first payment, the date from which the payment is claimed.

STATE OF ———, *County of* ———, *ss:*

Subscribed and sworn to before me this —— day of ———, 190–, and I certify that the pensioner, above named, has this day exhibited to me his pension certificate, above described, and was fully identified as the pensioner named therein, and that he signed the following duplicate receipts in my presence.

(Magistrate's signature.) ——— ———,

(Official character.) ——— ———,

(P. O. address.) ——— ———.

(The magistrate must certify to any erasures or alterations.)

Original.

$——. ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Mar., 1903, to the 4 day of June, 1903, for which I have signed duplicate receipts.

——— ———.

(Sign name as above.)

(Witness who can write.)

——— ———.

Subtreasury, Boston.

The pensioner will sign these receipts in the presence of the magistrate.

Duplicate.

$——. (A.) ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Mar., 1903, to the 4 day of June, 1903, for which I have signed duplicate receipts.

——— ———.

(Sign name as above.)

(Witness who can write.)

——— ———.

Also insert post-office address on back of this voucher.

35 Roll No. ——.

(B.)

Army voucher No. ——.

WIDOW.

Dec., 1902.

$——

Return this voucher for payment to A. J. Hoitt, U. S. pension agent, Boston, Mass.

STATE OF ———, *County of* ———, *ss:*

I, ——— ———, clerk of the ——— court of the county and State aforesaid, do hereby certify that ——— ——— is ———, duly commissioned and qualified, and that he has authority to administer oaths for general purposes; that his commission was dated on the —— day of ———, 1—, and will expire on the —— day of ———, 190–, and that his signature within written is genuine.

Given under my hand and the seal of said court this —— day of ———, 190–.

——— ———, *Clerk.*

Instructions to officer before whom this voucher is executed.

The magistrate must carefully compare this voucher with the pension certificate exhibited to him.

Vouchers may be executed before any officer authorized to administer oaths for general purposes. If he has a seal and is required by law to use it to authenticate his official acts, it must be affixed; if not, a certificate of the proper officer, showing the commencement and termination of his term of office, and his signature, must be filed in this agency. Vouchers may also be executed before fourth-class postmasters, their mailing stamps to be used as seals.

The officer will also see that the correct post-office address of the pensioner is inserted in face and in back of voucher, giving street and number (when so designated). He will also give his own post-office address after his official title on face of voucher.

No checks will be sent in care of any person.

The officer will be held strictly responsible for the correctness of his certificate of identity of pensioner, in every particular, pursuant to act of July 7, 1898.

Write name and P. O. address plainly here.

Name, ——— ———; street, ———; city or village, ———; county, ———; State, ———.

36 Roll No. ——.

3—1002.

Unless the instructions on face and back of this voucher are specifically followed, the voucher will be returned for correction.

B "B" WIDOW. B

Be it known, that I, ——— ———, do solemnly swear that I am the identical person named in pension certificate No. ——, dated —— day of ———, 1—, in my possession, and now exhibited, and whose name is inscribed on the rolls of the Boston Agency, at the rate of —— dollars per month ———.

That I am the widow of ——— ———, who was a ———, Company ——— Regiment ——— Volunteers; that I have not remarried since the death of said soldier; that I am entitled to the pension named in this voucher; that I have not forfeited my right, title, or interest therein by a violation of any of the provisions of the pension laws; that my post-office address is No. —— street, ———, county of ———, State of ———.

Street and number should be given.

(Pensioner's signature.) ——— ———

(Signature must be written letter for letter as it is written in the pension certificate.)

(If pensioner signs by mark, two witnesses who can write.)

——— ———.

——— ———.

Officer must make the contents of the affidavit fully known to the affiants before signing or swearing.

DEPOSITION OF TWO WITNESSES.

We, the undersigned witnesses, do solemnly swear that we are well acquainted with the above-named pensioner; that she is the identical person she represents herself to be; and that, to our best knowledge and belief, she has not remarried since the death of her late husband, above named; and that our acquaintance with her is such that if she had resumed marriage relations, that fact would have become known to us.

(Witness' signature.) ——— ———,

(P. O. address.) ——— ———.

(Witness' signature.) ——— ———,

(P. O. address.) ——— ———.

(One person, other than magistrate or pensioner, who can write, must attest the signature of one or both witnesses, if by mark. Witnesses must not attest each other's signatures.)

——— ———.

Street and number should be given.

The pension certificate must be exhibited to the magistrate when this voucher is executed.

STATE OF ———, *County of* ———, *ss:*

Personally appeared before me, this —— day of ———, 190–, the witnesses whose signatures and post-office addresses appear above, whom I believe to be credible persons, and the pensioner, above named, and made oath in due form of law to the truth of the foregoing statements subscribed by them; and I certify that the aforesaid pensioner has this day exhibited to me her pension certificate, above described, and signed the following duplicate receipts in my presence.

(Magistrate's signature.) ——— ———,
(Official character.) ——— ———,
(P. O. address.) ——— ———.

(The magistrate must certify to any erasures or alterations.)

Original.

$——. ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Sept., 1902, to the 4 day of Dec., 1902, for which I have signed duplicate receipts.

——— ———.
(Sign name as above.)

(Witness who can write.)
——— ———.

Subtreasury, Boston.

The pensioner will sign these receipts in the presence of the magistrate.

Duplicate.

$——. (B.) ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Sept., 1902, to the 4 day of Dec., 1902, for which I have signed duplicate receipts.

——— ———.
(Sign name as above.)

(Witness who can write.)
——— ———.

Also insert post-office address on back of this voucher.

BLURR

87 Roll No. ——.

(E.)

Army voucher No. ——.

MOTHER.

Mar., 1903.

$——.

Return this voucher for payment to A. J. Hoitt, U. S. pension agent, Boston, Mass.

STATE OF ——, *County of* ——, *ss:*

I, —— ——, clerk of the —— Court of the county and State aforesaid, do hereby certify that —— —— is ——, duly commissioned and qualified, and that he has authority to administer oaths for general purposes; that his commission was dated on the —— day of ——, 1—, and will expire on the —— day of ——, 190–, and that his signature within written is genuine.

Given under my hand and the seal of said court this —— day of ——, 190–.

—— ——, *Clerk.*

Instructions to officer before whom this voucher is executed.

The magistrate must carefully compare this voucher with the pension certificate exhibited to him.

Vouchers may be executed before any officer authorized to administer oaths for general purposes. If he has a seal and is required by law to use it to authenticate his official acts, it must be affixed; if not, a certificate of the proper officer, showing the commencement and termination of his term of office, and his signature, must be filed in this agency. Vouchers may also be executed before fourth-class postmasters, their mailing stamps to be used as seals.

The officer will also see that the correct post-office address of the pensioner is inserted in face and in back of voucher, giving street and number (when so designated). He will also give his own post-office address after his official title on face of voucher.

No checks will be sent in care of any person.

The officer will be held strictly responsible for the correctness of his certificate of identity of pensioner, in every particular, pursuant to act of July 7, 1898.

Write name and P. O. address plainly here.

Name, —— ——; street, ——; city or village, ——; county, ——; State, ——.

RRED COPY

38 3—1008. Roll No.

Unless the instructions on face and back of this voucher are specifically followed, the voucher will be returned for correction.

E "C" MOTHER. E

Be it known, that I, ——— ———, do solemnly swear that I am the identical person named in pension certificate No. ——, dated —— day of ———, 1—, in my possession, and now exhibited, and whose name is inscribed on the rolls of the Boston agency, at the rate of —— dollars per month ———.

That I am the mother of ——— ———, who was a ———, Company ———, Regiment ——— Volunteers; that I have not remarried since the date of the death of said son; that I have been and am still dependent on my pension for support, and that my post-office address is No. ——, ——— street, ———, county of ———, State of ———.

Street and number should be given.

(Pensioner's signature.) ——— ———

(Signature must be written letter for letter as it is written in the pension certificate.)

(If pensioner signs by mark, two witnesses who can write.)

——— ———.

——— ———.

Officer must make the contents of the affidavit fully known to the affiants before signing or swearing.

DEPOSITION OF TWO WITNESSES.

We, the undersigned witnesses, do solemnly swear that we are well acquainted with the above-named pensioner; that she is the identical person she represents herself to be; that, to our best knowledge and belief, she has not remarried since the death of her late son; that her pension is necessary to her as a means of adequate support, and that our acquaintance with her is such that if she had resumed marriage relations, or if she were no longer dependent on her pension for support, the fact would have become known to us.

(Witness' signature.) ——— ———,

(P. O. address.) ——— ———.

(Witness' signature.) ——— ———,

(P. O. address.) ——— ———.

(One person, other than magistrate or pensioner, who can write, must attest the signature of one or both witnesses, if by mark. Witnesses must not attest each other's signatures.)

——— ———.

Street and number should be given.

The pension certificate must be exhibited to the magistrate when this voucher is executed.

STATE OF ———, *County of* ———, *ss:*

Personally appeared before me, this —— day of ———, 190–, the witnesses whose signatures and post-office addresses appear above, whom I believe to be credible persons, and the pensioner above named, and made oath in due form of law to the truth of the foregoing statements subscribed by them; and I certify that the aforesaid pensioner has this day exhibited to me her pension certificate, above described, and signed the following duplicate receipts in my presence.

(Magistrate's signature.) ——— ———,

(Official character.) ——— ———,

(P. O. address.) ——— ———.

(The magistrate must certify to any erasures or alterations.)

Original.

$——. ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Dec., 1902, to the 4 day of Mar., 1903, for which I have signed duplicate receipts.

——— ———.

(Sign name as above.)

(Witness who can write.)

——— ———.

Subtreasury, Boston.

The pensioner will sign these receipts in the presence of the magistrate.

Duplicate.

$——. (E.) ——— —, *190–*.

Received of A. J. Hoitt, U. S. pension agent at Boston, Mass., ———$\frac{x}{100}$ dollars by check No. —— dated ——— —, 190–, being for 3 months' and —— days' pension due me on pension certificate above described, from the 4 day of Dec., 1902, to the 4 day of Mar., 1903, for which I have signed duplicate receipts.

——— ———.

(Sign name as above.)

(Witness who can write.)

——— ———.

Also insert post-office address on back of this voucher.

39 United States Circuit Court of Appeals for the first Circuit.
October term, 1906.

NATIONAL EXCHANGE BANK OF PROVIDENCE, plaintiff in error, *v.* UNITED STATES OF AMERICA, DEFENDANT IN error.	No. 617. Error to the Circuit Court of the United States for the District of Massachusetts.

Before Colt, Putnam, and Aldrich, JJ.

Opinion of the Court.

January 2, 1907.

PUTNAM, J. This is an action at law, brought in the Circuit Court by the United States against the National Exchange Bank of Providence, in which a jury was waived in accordance with the statute, and the case was tried by the presiding judge on an agreed statement. The judgment was for the United States, and the defendant below sued out this writ of error. The principal facts are correctly stated in the opinion of the learned judge of the Circuit Court as follows:

"This was a suit at law to recover back money paid by the plaintiffs to the defendant upon pension checks bearing forged indorsements. By the agreed statement of facts it appears that the checks were issued quarterly by the United States pension agent, at Boston, between 1884 and 1897. Some of the persons to whose order the
40 checks were drawn were then dead; others were remarried widows not entitled to a pension. On June 18, 1897, the special examiner of the Pension Bureau reported to the Bureau that the indorsements of some of the checks in suit were probably forged by Munson. On December 18, 1897, notice of these forgeries was given to the defendant by the United States attorney, at Providence, and the defendant was informed that at a proper time reclamation would be made upon it. At various dates between February 19 and May 28, 1898, the indorsements upon the other checks were discovered to be forgeries. On July 22 the United States attorney made demand upon the defendants. The writ was dated August 27, 1901."

The precise form of only one of the so-called checks is shown by the record, as follows:

"United States Pension Agency, No. 297073.
"Boston, Mass., Mch 5 1892
"Assistant Treasurer of the United States
"Boston, Mass.
"Pay to the order of Mahala B. Jaques 9492 B81
"Thirty-six ^{100} Dollars. $36
"36 Interior
"W. H. OSBORNE,
"*U. S. Pension Agent.*

"Paid Mar. 12, 1892
"ASST. TREAS., *Boston.*

"Indorsements:

"MAHALA B. JAQUES
"*Payee.*

"M. M. ANGELL

"Pay Nat. Bank of the Republic, Boston or order, for collection, for account of First National Bank, Providence, R. I.

"C. E. LAPHAM,
"*Cashier.*

"Indorsement Guaranteed.
"Nat'l Bank of the Republic, Boston."

This is, however, understood to be a sample of the remaining checks. As they were drawn by the pension agent on the Assistant Treasurer of the United States, the question naturally arises whether, after all, they were anything more than official warrants, a question which we will turn to later. It will be observed, however, that no indorsement by the Exchange Bank appears on the
41 sample shown in the record, and whatever indorsement there is is simply "for collection."

The only question before us was also correctly put by the learned judge of the Circuit Court, as follows: "This, therefore, is the question presented for decision: If A by honest mistake pays money to B upon a check bearing a forged indorsement, and then A unnecessarily and unreasonably delays to notify B of the discovery of the forgery, can he recover back the money paid from B in the absence of evidence that the delay has worked damage to B?" The learned judge said: "Upon the whole, the authorities answer this question in the affirmative." He added as follows: "Negligence without resulting damage does not create an estoppel. In the case at bar, damage was alleged, but the agreed facts contain no evidence to support the allegation." It is to be noted that this case does not involve the rule which arises out of payments by a bank of checks drawn upon itself, bearing an apparent but forged signature of one of its customers. It relates only to the demand for the repayment of money paid on account of forged or false indorsements of signatures of individuals whose signatures the United States were not bound to know, as a bank is bound to know those of its customers. It is also to be noted that there is no suggestion made before us that either the bank in question here or the United States have been guilty of negligence except in the particular to which our attention has been brought, namely, an unreasonable delay on the part of the United States in giving notice of the discovery of the false signatures or forgeries.

Mr. Justice Story, in 1825, in his opinion in United States Bank v. Bank of Georgia, 10 Wheat., 332, closing at pages 343 and 344 a discussion of the relations between a bank and an individual from whom the bank may have received forged circulating bills, apparently its own, and other bills or notes bearing forged signatures, and explaining that, under some circumstances, there is nothing uncon-

scientious in retaining the sums received from the bank "which its acts have deliberately assumed to be genuine," ends as follows:

"If this doctrine be applicable to ordinary cases, it must apply with greater strength to cases where the forgery has not been detected until after a considerable lapse of time. The holder,
42 under such circumstances, may not be able to ascertain from whom he received them, or the situation of the other parties may be essentially changed. Proof of actual damage may not always be within his reach; and therefore, to confine the remedy to cases of that sort, would fall far short of the actual grievance. The law will, therefore, presume a damage, actual or potential, sufficient to repel any claim against the holder. Even in relation to forged bills of third persons, received in payment of a debt, there has been a qualification engrafted on the general doctrine, that the notice and return must be within a reasonable time; and any neglect will absolve the payer from responsibility."

The concluding rule thus stated by Mr. Justice Story with regard to commercial bills became thoroughly settled as a principle of law in the United States, it being distinguished from the severer rule which existed in England. It reaches all classes of commercial paper, and never has been questioned by any authority in a positive way. In Bank of Commerce v. The Union Bank, 3 N. Y. Rep. (3 Comstock), 230, 257, decided in 1850, the opinion rendered in behalf of the court by Judge Ruggles, relating to the precise question we have here, closes as follows:

"In cases where no negligence is imputable to the drawee in failing to detect the forgery, the want of notice within a reasonable time is excused, provided notice of the forgery is given as soon as it is discovered."

United States v. The Central Bank, 6 Fed Rep., 134, 135, decided in 1881, was supported by the concurring opinions of Judge Butler, district judge for the Eastern District of Pennsylvania; Judge Cadwalader, also a district judge of the same district, and Judge McKennan, a circuit judge, all of them of acknowledged experience and ability. The case involved some very peculiar facts, so that the ruling was broader than anything that we are considering here. Nevertheless, the opinion referred to Cooke v. United States, 91 U. S., 389, in such a way as to adopt the recognition of the peculiar rules relative to commercial paper stated at pages 396 and 397; and, what is important here, it made no exception growing out of any question whether damage ensued from any delay in giving notice of the forgeries. There was an opinion in the same volume by
43 District Judge Choate, of the Southern District of New York, in United States v. National Park Bank, 6 Fed Rep., 852, 854, which sustains the position of the United States taken before us; but it was rested on decisions none of which seem in point. Certainly, in almost every case cited by him, if not in every one, the court or the reporter was particular to state that notice was given immediately on the discovery of the forgery. Many related to the ordinary rule

about money paid under mistake, while the rule with reference to money paid out on commercial paper, like all other rules concerning recourse to parties indorsing such paper, has long been regarded in both the United States and England as peculiar, although, to a certain extent, dealt with, as we have said, more sharply in England than with us.

In United States v. Clinton Bank, 28 Fed. Rep., 357, decided in 1886 by Mr. Justice Brewer, then a Circuit Judge, with regard to the rule which we maintain, the learned judge said that it seemed "to be sustained by the common voice of the authorities." Also, we refer to the notes made by Mr. Justice Holmes to Kent's Commentaries, 12th ed. (1873), vol. 3, *85, where it is stated that recovery may be had by the holder, "provided he has given notice of the forgery as soon as discovered. The same note makes comparison with the more precise rule in England. Note b to page *86, which we understand to be the personal note of Chancellor Kent, recognizes, with reference to negotiable paper, the same condition, namely, that "there be no unreasonable delay after the discovery of the forgery." This is stated unqualifiedly. So the note of the distinguished author J. C. Perkins to Chitty on Contracts, 11th Am. ed. (1874), vol. 2, 931, says as follows: "But the one who has received such counterfeit bills or notes in payment of his debt must return, or offer to return, them in a reasonable time, or he will forfeit his rights to recover the amount of them from the payer."

It is true that, in some of the decisions, the observations pertinent to this case were not strictly necessary, and were in a sense dicta. Nevertheless, what we have cited were the unqualified expressions of learned and experienced judges and authors who were not using them theoretically, but historically. None of them made any exception of the kind claimed by the United States in the case at bar, namely, that the defending bank, in order to meet the demand of the United States, is bound to establish that it suffered detriment by the delay.

44

On the other hand, none of the authorities cited in behalf of the United States sustains them. Daniel on Negotiable Instruments, 5th ed., § § 1371 and 1372, on which they especially rely, confirms the rule as claimed by us. At § 1371 the author says: "It is undoubtedly necessary that the maker, acceptor, or other party, who demands restitution of money paid under a forged indorsement, or under a forged signature of the drawer of a bill, should make the demand without unreasonable delay." This is the rule. At § 1372 Mr. Daniel merely adds: "But there is high authority for the more liberal, and, I think, more just and wiser doctrine," that is, the same as that claimed by the United States. This, so far from denying the established rule, admits it, and it only takes cognizance of some supposed expressions the other way. We have examined all of Mr. Daniel's citations in support of this suggestion, and they fail therein. The first one is Parsons on Bills and Notes, vol. 2, 598. This is probably the edition of 1879, where nothing is stated positively. The learned author there

uses the word "perhaps." Another reference is to Welch v. Goodwin, 123 Mass., 71, 78. In that case it is stated at page 71 that notice was immediately given, and the opinion of the court, at page 78, expressly lays aside the question we have before us. In two of the New York cases referred to it was stated by the reporter that notice of the forgery after it was discovered was immediate. In Third National Bank v. Allen, 59 Mo., 310, and in Lyons City Bank v. Fort Pitt Bank, 159 Pa., 46, the question before us was in no way passed on, nor was it in issue; and the other cases were ordinary suits for the recovery of money paid under mistake of fact. Among the cases not cited by Mr. Daniel, but cited to us at bar, are The United States v. The National Bank of the Republic, 2 Mackey, 289, and United States v. Onondaga Bank, 39 Fed., 259. The first of the two cases passes with those we have already explained, because, at page 297, the opinion observes that the notitce given "seems reasonably prompt, unless there are peculiar circumstances in the case that made it otherwise." In
45 this case the defendant bank was notified within six days after the forgery of the indorsement in question was discovered. In the second case various authorities cited by us are referred to, but notice was given within three days after the forgery or fraud was discovered. All the court says on the point before us is that notice was given as we have observed.

There is an allusion to this topic in Zane on Banks and Banking (1900), 271, which leaves it in precisely the same form as left by Daniel, giving the rule as we give it, with the additional statement as to certain authorities precisely as stated by him.

Some of the cases, in discussing the matter, differ as to the equities under circumstances like those before us. Some hold that the loss should be allowed to remain where it fell. However this may be, any demand for prompt notice in cases of forgeries is wholesome. When discovered, forgeries should not be coddled, but should be made known, both to the public prosecutor and to those immediately concerned; and any attempted test with reference to the question whether the party from whom recovery is sought has suffered by delay is wholly unsatisfactory, because the determination whether one who has suffered by a forgery may recoup himself is more a matter of chances, which cannot be estimated, than the result of logical investigation of particular facts.

Consequently, if this were a case of commercial paper proper as known to the law of merchants and between individuals, it is established that unreasonable delay in giving notice after the discovery of the forgeries would have discharged the Exchange Bank, without regard, ordinarily, to any question whether it suffered damage thereby. This, of course, is an exceptional rule, applicable to distinctly commercial paper, because, with regard to liability for money paid on a signature supposed to be genuine, but forged, or paid under any other mistake, in ordinary transactions, it is admittedly necessary that damage should have ensued by reason of any alleged negligence in giving notice of the facts. In conclusion as to this topic, the rule,

as we understand it, is in entire harmony with the fundamental principles of that portion of the commercial law which relates to giving parties to commercial paper notices of defaults. They insist on promptness, but ordinarily require no proof *pro* or *con* on the question whether damage resulted from delays.

46 In the Circuit Court, and also as the case was first argued before us, no claim was made that there is any distinction arising from the fact that what are in question here are what might be called Treasury warrants, instead of checks, or from the further fact that the party who relied on the forged or false indorsements was the United States. The case was submitted in all respects as though the drafts were commercial paper, and the litigation between private individuals. In that view, the only noticeable point was that the exceptional rule in reference to commercial paper had been overlooked. At the conclusion of the arguments we hesitated because we doubted whether, in any view, the United States could lose any rights by laches, and again, because the payments made to the Exchange Bank were on paper which might well be called Treasury warrants. Therefore the case was reargued, but we received therefrom little light of value.

The first doubt is met by Cooke v. United States, 91 U. S., 398, where it seems to have been settled that, in the event officers of the United States are authorized by statute to issue what is in form commercial paper, and do issue it, the relations of the United States thereto are the same as those of individuals. The other doubt is not removed by Cooke v. United States, and it is the more serious one. The usual rule is that, when an officer of a public corporation, be it State, county, or town, draws upon another officer of the same public corporation for the purpose of discharging a public liability, whether the draft is by authorization of statute or by settled usage, it is ordinarily known as a warrant, and is not commercial paper in the sense of the law merchant; and no peculiar estoppel arises with reference to it. On the other hand, with mere warrants, the peculiar advantages of the usual recourse to indorsers which apply to commercial paper according to the law merchant ordinarily fail. Consequently, the United States gain in certain respects by regarding drafts like this in question as commercial paper—that is, as checks—while the disadvantages arising therefrom are relatively small. For this reason, and for some other reasons, some of the statutes, if not all of them, especially section 4768 of the Revised Statutes, describe the instruments in question here as checks. It was apparently

47 assumed by the Circuit Court, and it certainly was not contravened by the United States until we ordered this case reargued, that the paper in suit is strictly commercial; and the same was assumed in cases which we have cited in which the United States were concerned. We may refer especially to United States v. The Central National Bank and United States v. Clinton Bank already explained, in which drafts of paymasters on assistant treasurers of the United States were in question.

Under all the circumstances, whatever might otherwise be our doubts, we think we are controlled by the decisions of the Federal courts which we have cited. These, although all in the Circuit Courts, constitute such a weight of authority, uniform for so long a period, that we can not disregard them.

Inasmuch as the facts in this case have been agreed to by the parties and a jury was waived, we are able to render a final judgment on the record before us. Pullman's Car Company v. Metropolitan Railway Company, 157 U. S., 94, 112; Meyer v. Richards, 163 U. S., 385, 415. Saltonstall v. Birtwell, 150 U. S., 417, 419, is an exceptional case for the reasons stated in the opinion rendered by the Chief Justice.

The judgment of the Circuit Court is reversed, and the case is remanded to that court, with directions to enter judgment for the defendant.

Dissenting opinion.

ALDRICH, J. It is at least doubtful whether judgment ought to go against the Government under the circumstances of this case.

The moment the United States had paid the Providence Bank money through mistake upon pension checks bearing forged indorsements there was created in its behalf by operation of law the right to recover it back. The question is therefore whether the United States has lost the right. The right might be lost, perhaps, under an effective state of facts upon the ground either of estoppel, laches, or negligence. The majority opinion proceeds upon the idea that the Government can not recover, because it failed upon discovery to give prompt notice of the forgeries and make demand for repayment.

48 It seems to be conceded, and it is unquestionably true, that want of prompt notice in a case like this is not governed by the peremptory and necessary dogmatic rules prevailing in commercial law in respect to bills and notes and other commercial paper circulating in trade. Neither is it a case in which the Government has lost its right through estoppel, because it is not a case where it is shown that the bank was in any way damaged by the delay on the part of the Government in giving notice, and loss or damage is understood to be a necessary element of estoppel by conduct. If the Government therefore has lost its right of recovery, a right which at one time existed, the loss of the right came by reason of negligence or laches resting in the failure to give notice. So it is not a case where diligence is an element of the plaintiff's case in establishing his right, because the right of recovery resulted by operation of law from the fact that the payments were made upon forged indorsements through mistake, and thus it follows, as it seems to me, that the negligence comes into the case as an element of the defence rather than as a necessary element in the plaintiff's case. Delay being a matter of defence, it is difficult to see why it should operate to bar recovery unless the party receiving the money on forged indorsements has been damaged by the delay.

Again, this is not a situation in which prompt notice is required under commercial rules to charge an indorser, as such, upon an instrument. The precise questions are whether laches or negligence are imputable to the Government in a case like this, and, if so, whether a defence results upon such ground by operation of law in favor of a party who, through his own error or mistake, has collected money from the Government upon forged indorsements upon pension warrants or checks and who without proof of change of position or of injury relies solely upon failure of the Government to give prompt notice of the discovery of forgery.

I am aware that the doctrine of the old maxim, "nullum tempus occurrit regi," as well as the ancient and somewhat broader doctrine that negligence is not imputable to a Government, is somewhat relaxed. Still I am not willing to adopt the idea that the authoritative decisions go beyond what is said in Cooke v. United States (91 U. S., 389, 398). In that case the court, after stating the gen-
49 eral rule that laches is not imputable to the Government in its character as sovereign, apparently so far limits the general rule as to allow laches and negligence to operate upon situations involving commercial transactions, and the exceptional rule in respect to commercial transactions was apparently adopted as subject to an important qualification—that is to say, that laches or negligence only operate against the Government, provided a particular official has been specially charged with the performance of a duty which he neglects with consequent loss. That idea seems to have been carefully safeguarded as a qualification upon the limited rule in the following paragraph, on page 398:

"Generally, in respect to all the commercial business of the Government, if an officer specially charged with the performance of any duty, and authorized to represent the Government in that behalf, neglects that duty, and loss ensues, the Government must bear the consequences of his neglect. But this can not happen until the officer specially charged with the duty, if there be one, has acted or ought to have acted."

Furthermore, I do not accept it as at all clear that payments upon pension warrants or pension checks, if they are checks, which in a sense relate to a Government bounty or gratuity, thus presenting a situation *sui generis*, should be treated as things relating to a commercial transaction, in respect to which the Government comes down from its position of sovereignty and enters the domain of commerce within the view of the expressions of the Supreme Court in Cooke v. United States. There are hundreds of thousands of pension warrants or checks spreading over the entire country, which, under existing conditions and for the convenience of pensioners are cashed at local banks. There is at least some shadow of duty upon the local banks to know whether the pensioner is dead or alive, and whether the indorsements are genuine or forged.

It must often happen, as is shown in this case, that payment through mistake is in one department of the Government and discov-

cry of the forgery in another, and, so far as seen, it is not expressly made the special duty of a particular official to give notice. It is difficult, therefore, to see what particular officials are remiss. Indeed, the majority opinion, in the concluding paragraph upon the defence of negligence, looks upon the question as one which would
50 involve doubt if not controlled by decisions in the Federal courts. It does not seem to me that either the proposition that negligence applies as a general rule to Government transactions of this character has been settled by a controlling weight of authority, or that it ever has been distinctly decided by the United States courts in a case like this that the defence of mere Government delay is an available one in the hands of a party who shows no loss.

I will first call attention to the cases upon which the majority opinion seems to rely. The case United States Bank v. Bank of Georgia (10 Wheaton, 333) related to fraudulently altered bank notes circulating in affairs of commerce, and involved in a general account between two banks, and therefore is not in point here.

The case of United States v. The Central Bank (6 Fed. Rep., 134) was not a pension case, but one involving commercial paper drawn in favor of an individual by a paymaster in the Army, presumably for army supplies. The decision was one apparently without consideration further than to accept the commercial situation there as controlled by the commercial situation involved and passed upon in Cooke v. United States.

In United States v. Clinton National Bank (28 Fed. Rep., 357) the defendant pleaded a delay of ten years after notice and loss by reason of the delay. To this the plaintiff demurred, and the case was accepted as one controlled by Cooke v. United States. The effect of the demurrer was an admission that the bank had suffered actual loss by the delay.

I do not purpose to attempt an analysis of the decisions further than to call attention to the fact that the Clinton Bank case, decided by Mr. Jusice Brewer when a circuit judge, was the only case involving a situation relating to a transaction in the nature of a sovereign gratuity or pension. That case was one of bounty, and perhaps stands as something in the nature of a pension rather than something in the domain of commerce, and it is important to note that actual loss was sustained by the bank. Loss was an important element, and one thus making it an entirely different case from the one at bar.

Now, on the contrary, we have the case of United States v. National Bank (6 Fed. Rep., 852, 854), where the exceedingly
51 well-reasoned opinion was by Judge Choate, in which he points out the distinction between recovery for money paid for counterfeit money and for money paid on fraudulently indorsed drafts, and rests the decision upon the idea that delay in giving notice in the case of a draft for bounty is not a complete defence if unattended with loss. The case of Onondaga County Savings Bank (39 Fed. Rep., 259) was a pension case where the payment was upon forged pension drafts, and upon full con-

sideration was decided favorably to the Government upon the theory that the mistake was a mutual one where parties were equally ignorant, and thus a situation in which there was no greater obligation upon one party than the other to discover the death of the payee and the forgery. Judge Cox's decision also involved an examination of United States v. Clinton National Bank (28 Fed Rep., 357) and United States v. Central Bank (6 Fed. Rep., 134), which he points out as the two cases in which the defendant succeeded, and that in one case there was a delay of twelve years in giving notice after knowledge, and in the other, which was Judge Brewer's case, that there was no notice whatever.

The case of United States v. National Bank of the Republic (2 Mackey's Rep., 289, 296), in the Supreme Court of the District of Columbia, is likewise useful, because it points out the distinction between different kinds of negotiable commercial paper in respect to which the reason for notice is to charge in contract upon the instrument or indorsement, and situations like this, where the recourse is to recover money paid under mistake, where the right rests more upon equitable grounds.

Query whether the doctrine of imputable Government negligence does not depend more upon the question whether the subject-matter of the check or treasury warrant relates to a purely sovereign act or, on the other hand, to something within the domain of commerce, than upon the mere form and transaction of the check or warrant itself. The subject-matter of Cooke v. United States, which was Treasury notes circulating as commercial paper, was something clearly in the domain of commerce, and query whether the medium adopted by the Government for distributing the pension fund is not something relating to a pure act of sovereignty. Apparently a question like that involved in this case has not yet been dealt with
52 by the Supreme Court. Surely Cooke v. United States does not deal with any such question, because it expressly limits itself to situations where the Government comes down from its character as sovereign and enters the domain of commerce.

It would be an inequitable hardship upon the Government, thus discharging a beneficent obligation under circumstances necessarily affording a field of opportunity for deception and fraud difficult to discover under the inherent defects of Government agencies resulting from lack of direct individual or official responsibility, to apply the equitable doctrine of laches as a defence in favor of a party who had received money from the Government on forged indorsements, and who had not been damaged by the delay in ascertaining the fact of the forgery and giving immediate notice, and it would be an unnecessary and unreasonable legal hardship upon the Government, under such circumstances, to have a hard and fast rule that delay shall be an available defence in behalf of one who has not been damaged. At least, in such a sui generis situation, in order to make delay an available defence, it should be incumbent upon a party to show that he has suffered some damage. From the very nature of the situation, in

affairs of government, there must necessarily be more delay than in ordinary commercial affairs, where the discovery and the duty are direct and individual, and in such government situations a defence upon the ground of negligence should depend upon showing that the party has suffered loss or inconvenience.

The delay here was not very considerable, and surely not so much as to create a defence upon the ground of laches; and query, it not being a situation governed by commercial law, whether the delay was sufficient under the circumstances to become an available defence upon the ground of negligence.

But quite aside from the question as to how far negligence in respect to sovereign acts is imputable to the Government, it is well to consider the effect of mere delay in other and different situations without proof of resulting loss. Daniel on Negotiable Instruments, at 1372, in dealing with questions relating to commercial paper, asserts the reasonableness of the wiser and juster doctrine that mere
53 space of time is not important, provided loss or inconvenience does not result.

Where money is paid by mistake upon forged instruments in transactions not governed by legal rules in respect to general negotiable paper, the right of recovery seems to be accepted as one immediately attaching by force of law, and the delay in giving notice is generally accepted as a matter of defence to be set up against recovery, and its effectiveness as a defence seems to depend upon loss. This being so, the burden would seem to be upon the defendant to show the loss. Under such circumstances mere lapse of time and mere delay without prejudice are often spoken of both in England and in this country as of little consequence (18 Am. & Eng. Encyc., 101, note 4; 5 Cyc., 547 (3) and note 42), and injury is often accepted as an element of the defence which prevents recovery by reason of failure to act promptly in giving notice (5 Am. & Eng. Encyc., 1069, notes 1 and 2).

In the Circuit Court, before Judge Lowell, this case was decided for the Government upon the ground that delay unsupported by proof of loss was not a defence. Numerous authorities are cited in the opinion of that court. (141 Fed. Rep., 209.) Quite likely some of the authorities which relate to situations where prompt notice was necessary to create liability may seem not to support the proposition. But such a situation is not at all like the case at bar. If the defence prevails here, it is upon the severe ground that the Government has through delay forfeited an existing right created by law from the mere fact of payment upon forged paper under a mistake, and the forfeiture will be made to operate in favor of one who has not shown that he was injured by the delay; and query whether such an inequitable and embarrassing rule in sovereign affairs would not be too arbitrary and abstract in its application to a government, which in its character as sovereign is endeavoring to distribute something in the nature of charity.

55 United States Circuit Court of Appeals for the First Circuit.
October term, 1906.

NATIONAL EXCHANGE BANK OF PROVIDENCE, DEFENDANT, plaintiff in error, *v.* UNITED STATES OF AMERICA, PLAINTIFF, DEFENDANT in error.	No. 617.

Judgment in Circuit Court of Appeals.

January 2, 1907.

This cause came on to be heard April 25 and 26, 1906, upon the transcript of the record of the Circuit Court of the United States for the District of Massachusetts, and was argued by counsel.

On consideration whereof, It is now, to wit, January 2, 1907, here ordered, adjudged, and decreed as follows: The judgment of the Circuit Court is reversed, and the case is remanded to that court with directions to enter judgment for the defendant.

By the Court:

JOHN G. STETSON, *Clerk.*

56 United States Circuit Court of Appeals for the First Circuit.

NATIONAL EXCHANGE BANK OF PROVIDENCE, DEFENDANT, plaintiff in error, *v.* UNITED STATES OF AMERICA, PLAINTIFF, DEFENDANT in error.	No. 617.

Clerk's certificate.

I, John G. Stetson, clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages, numbered 1 to 38, inclusive, hereto prefixed, contain and are a true copy of the writ of error to the circuit court of the United States for the District of Massachusetts, and the return of said Circuit Court thereon, in the cause entitled in said Circuit Court,

UNITED STATES OF AMERICA, PLAINTIFF, *v.* NATIONAL EXCHANGE BANK OF BOSTON ET AL., defendants.	No. 1191, law docket.

I further certify that said pages, numbered 1 to 38, inclusive, contain and are a true copy of the record upon which the said cause was heard in said Circuit Court of Appeals April 25 and 26, 1906.

I further certify that the printed pages, numbered 39 to 53, inclusive, hereto prefixed, contain and are a true copy of the opinion of said Circuit Court of Appeals in said cause, and of the dissenting opinion therein, and that the printed page hereto prefixed, numbered 55, contains and is a true copy of the final judgment entered in said cause January 2, 1907.

I further certify that said printed pages, numbered 1 to 55, inclusive, contain and are a true copy of the record and all proceedings in said cause in said Circuit Court of Appeals, to and including March 25, 1907, and that a mandate has not issued therein.

In testimony whereof I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fourteenth day of May, A. D. 1907.

[SEAL.] JOHN G. STETSON, *Clerk.*

57 United States Circuit Court of Appeals for the First Circuit.

NATIONAL EXCHANGE BANK OF PROVIDENCE, plaintiff in error,
v.
UNITED STATES OF AMERICA, DEFENDANT in error.

Petition for writ of error.

The United States of America, defendant in error in the above-entitled cause, by Henry M. Hoyt, Solicitor-General, respectfully shows that the above-entitled cause is now pending in the United States Circuit Court of Appeals for the First Circuit, and that a judgment was rendered therein on the second day of January, 1907, reversing a judgment of the Circuit Court of the United States for the District of Massachusetts in its favor and remanding the case to that court with directions to enter judgment for the defendant; that the matter in controversy in said suit exceeds $1,000 besides costs, to wit, the sum of $9,044.82; that the jurisdiction of none of the courts above mentioned is or was depending in any wise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States; that this case does not arise under the patent laws, revenue laws, or criminal laws, and that it is not an admiralty cause; that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and therefore the said United States of America respectfully prays that a writ of error be allowed in the above-entitled cause, directing the clerk of the United States Circuit Court of Appeals for the First Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of
58 the United States, in order that the errors complained of in the assignment of errors to be filed herewith may be reviewed

and, if error be found, corrected according to the laws and customs of the United States.

HENRY M. HOYT,
Solicitor-General.

59 UNITED STATES OF AMERICA, *ss:*
To National Exchange Bank of Providence:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the United States Circuit Court of Appeals for the First Circuit, wherein United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Oliver Wendell Holmes, associate justice of the Supreme Court of the United States, this tenth day of May, in the year of our Lord one thousand nine hundred and seven.

OLIVER WENDELL HOLMES,
Associate Justice of the Supreme Court of the United States.

60 UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *May 13th, A. D. 1907.*

I hereby certify that I this day at Boston served the within precept by giving to Charles K. Cobb, attorney of record of the within-named National Exchange Bank of Providence, a true copy duly attested of the within precept.

J. H. WATERS,
Deputy U. S. Marshal.

Fees:
Service, 2. 00
Travel, .06
2. 06

61 (Indorsement on cover:) File No. 20723. U. S. Circuit Court Appeals, 1st Circuit. Term No. 321. The United States, plaintiff in error, vs. National Exchange Bank of Providence. Filed May 20th, 1907. File No. 20723.

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